UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Misc. Action No. 25-0170 (CKK)

ORDER
(December 6, 2025)

Upon consideration of Petitioner Daniel Richman's [9] Motion for Temporary Restraining Order, the relevant legal authority, and the entire present record, the Court concludes that Petitioner Richman is entitled to a narrow temporary restraining order to preserve the status quo while the Court evaluates his [1] Motion for Return of Property and awaits full briefing and argument from the parties. *See Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, 763 F. Supp. 3d 13, 16 (D.D.C. 2025) (LLA) (explaining that such orders "preserve the status quo" to allow time for courts to assess "weighty legal issues" and "properly evaluate the merits" of parties' claims).

I.

Three facts weigh in favor of entering a prompt, temporary order to preserve the status quo now, before the Government has filed a response.

First, although the Court has been in communication with attorneys from the U.S. Attorney's Office for the District of Columbia,[1] the U.S. Attorney's Office for the District of Columbia has not yet entered an appearance to make representations on behalf of the Government, and counsel for the Government has not yet been identified. *See* Pet'r's Ex. A, Dkt. No. 9-2.

Second, the Government has not yet indicated who has custody of the material at issue, and neither the Petitioner nor the Court can determine the identity of the custodian until the Government appears in this case. Given that the custody and control of this material is the central issue in this matter, uncertainty about its whereabouts weighs in favor of acting promptly to preserve the status quo.

Third, the Court finds that the Government has received actual notice of Petitioner Richman's [9] Motion, ensuring that the Government is positioned to act promptly to seek any appropriate relief from this Order. Specifically, counsel for the Government may move to dissolve or modify this Order immediately upon entering an appearance, and the Court will resolve any such motion "as promptly as justice requires." Fed. R. Civ. P. 65(b). Under the circumstances, the Court will allow and consider such a motion at any time upon contemporaneous notice to counsel for Petitioner Richman. *See id.* (providing that such a motion may be filed "[o]n 2 days' notice to the party who obtained the order" or "on shorter notice set by the court").

II.

Petitioner Richman has made each of the necessary showings to obtain a narrow temporary restraining order. See *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (setting out four-factor test for issuance of preliminary injunctive relief); *Council on Am.-Islamic Rels. v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009) (CKK) (noting that the same factors govern the issuance of temporary restraining orders); *Nken v. Holder*, 556 U.S. 418, 435 (2009) (explaining that the balance-of-equities and public-interest factors "merge" when the Government is the opposing party).

The Court concludes that Petitioner Richman is likely to succeed on the merits of his claim that the Government has violated his Fourth Amendment right against unreasonable searches and seizures by retaining a complete copy of all files on his personal computer (an "image" of the computer) and searching that image without a warrant. *See United States v. Comey*, No. 1:25-CR-272-MSN-WEF, 2025 WL 3202693, at *4–7 (E.D. Va. Nov. 17, 2025). The Court further concludes that Petitioner Richman is also likely to succeed in showing that, because of those violations, he is entitled to the return of the image under Federal Rule of Criminal Procedure 41(g).

Petitioner Richman has also shown that, absent an injunction, he will be irreparably harmed by the ongoing violation of his Fourth Amendment right against unreasonable seizures arising from the Government's continuing retention of the image of his computer and related materials.

Finally, the Court finds that the balance of the equities and the public interest weigh in Petitioner Richman's favor and support a limited temporary restraining order that is narrowly tailored to preserving the status quo while this Court considers his [1] Motion for Return of Property on an expedited basis.

III.

Accordingly, Petitioner Richman's [9] Motion for Temporary Restraining Order is **GRANTED IN PART** and **DEFERRED IN PART**, as follows:

The United States and its agent, the Attorney General of the United States, are **ORDERED** to identify, segregate, and secure the image of Petitioner Richman's personal computer that was made in 2017, his Columbia University email accounts, and his iCloud account; any copies of those files; and any materials obtained, extracted, or derived from those files (collectively, "the covered materials") that are currently in the possession of the United States.

The United States and its agents, including the Attorney General of the United States, are further **ORDERED** not to access the covered materials once they are identified, segregated, and secured, or to share, disseminate, or disclose the covered materials to any person, without first seeking and obtaining leave of this Court.

The Attorney General of the United States or her designee is further **ORDERED** to certify that the United States is in compliance with this Order no later than **12:00 p.m. ET on Monday, December 8, 2025**.

It is further **ORDERED** that Petitioner Richman's counsel shall promptly serve a copy of this Order on the Attorney General of the United States, accompanied by copies of all papers filed in this action to date.

All other requests for relief in Petitioner Richman's [9] Motion for Temporary Restraining Order are **DEFERRED** pending a response from the Government and further consideration by this Court.

This Order shall remain in effect until **11:59 p.m. ET on Friday, December 12, 2025**, or until dissolved by further order of this Court, whichever comes first.

Finally, it is **ORDERED** that, no later than **9:00 a.m. ET on Tuesday, December 9, 2025**, the Government shall file a combined response to Petitioner Richman's [1] Motion for Return of Property, response to Petitioner Richman's [9] Motion for Temporary Restraining Order, and motion to dissolve or modify this Order, if appropriate. Petitioner Richman shall file any reply no later than **5:00 p.m. ET on the same day, Tuesday, December 9, 2025**.

SO ORDERED.

Dated: December 6, 2025

Colleen Kollar-Kotelly

COLLEEN KOLLAR-KOTELLY
United States District Judge

Footnotes

[1] These attorneys have helpfully facilitated communication on administrative matters. The Court appreciates counsel's prompt assistance on these matters.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN, ***Petitioner-Movant,*** v. **THE UNITED STATES OF AMERICA,** ***Respondent.***	**CIVIL NO. 1:25-MC-170-CKK**

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65(b)(4) of the Federal Rules of Civil Procedure, the United States moves for an order dissolving the Court's December 6, 2025 temporary restraining order entered in this case. *See* CM/ECF No. 10.

In support of this motion to dissolve the temporary restraining order, the Government relies upon the attached memorandum of law.

A proposed order is attached hereto.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN, ***Petitioner-Movant,*** v. **THE UNITED STATES OF AMERICA,** ***Respondent.***	**CIVIL NO. 1:25-MC-170-CKK**

UNITED STATES' RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR RETURN OF PROPERTY AND IN SUPPORT OF UNITED STATES' MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

Petitioner Daniel Richman's motion for a return of property is actually a collateral motion to suppress aimed at hindering the government from using that property as evidence in a separate criminal proceeding in another district, and his request for preliminary relief is in effect a request that the Court enjoin the Government from conducting an ongoing criminal investigation and a potential prosecution. Neither request is legally appropriate.

Richman's Rule 41(g) motion is not designed to secure the return of property that he needs or wants. It is a strategic tool to obstruct the investigation and potential prosecution of James Comey, and granting it would have the effect of serving as a suppression ruling if Comey is indicted again. But that is emphatically not the purpose of a proper Rule 41(g) motion.

Similarly, the Court's grant of Richman's request for preliminary relief has effectively enjoined the government from investigating and potentially prosecuting Comey. But federal courts cannot enjoin federal criminal prosecutions; a civil plaintiff cannot circumvent bedrock federal criminal procedure via an equitable proceeding like this one. So the Court should dissolve its temporary restraining order and deny Petitioner's motion.

FACTUAL BACKGROUND

A. The Arctic Haze investigation and Comey's Senate testimony.

Richman served as a special government employee at the FBI between June 2015 and February 2017.[1] Shortly after his departure from the FBI, the Government began investigating whether Richman had disclosed classified information to *The New York Times* concerning Comey's decisionmaking process concerning the FBI's investigation into former Secretary of State Hillary Clinton's use of a private email server. *See* CM/ECF No. 1-1 at 3. The investigation demonstrated, among other things, that Comey had used Richman to provide information to the media concerning his—that is, Comey's—decisionmaking process concerning the Clinton email investigation and that Richman had served as an anonymous source in doing so.

During the course of the investigation, the Government sought and obtained four search warrants in this district authorizing the Government to search for and seize evidence of violations of 18 U.S.C. §§ 641 and 793 from certain email accounts utilized by Richman, a hard drive containing a forensic image of his personal computer, and his iCloud account.[2] *See* CM/ECF No. 1-1 at 3.

Comey provided relevant testimony to the Senate Judiciary Committee shortly before his employment as FBI Director was terminated, and again in September 2020. In May 2017, he testified in response to questioning from Senator Grassley that he had never authorized someone at the FBI to serve as an anonymous source regarding the Clinton email investigation. And in September 2020, he reaffirmed that testimony in response to questioning from Senator Cruz.

B. The Comey prosecution.

In September 2025, a federal grand jury in the Eastern District of Virginia returned a two-count indictment charging Comey with violations of 18 U.S.C. §§ 1001 and 1505 based on his September 2020 Senate testimony.

After the indictment was returned, the Government filed a motion seeking judicial assistance in implementing a filter protocol. During subsequent litigation related to that request—as well as a motion filed by Comey seeking access to grand jury materials—the assigned magistrate judge raised concerns regarding both potential Fourth Amendment issues and Comey's attorney-client privilege vis-à-vis Richman, who began to represent Comey shortly after his termination as FBI Director.[3]

The indictment was subsequently dismissed after the court found that Lindsey Halligan, who presented the proposed indictment to the grand jury, had been improperly appointed as Interim U.S. Attorney in violation of the Appointments Clause of the U.S. Constitution and 28 U.S.C. § 546. *See generally* Nov. 24, 2024 Order, E.D. Va. Docket No. 1:25-CR-272, CM/ECF No. 213. The court dismissed the indictment without prejudice. *See id.* at 27.

Shortly after the indictment was dismissed, Richman filed a motion in this Court for the return of property pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, in which he sought an order "directing the government to immediately return or delete certain materials illegally seized and/or retained by the government, as well as any copies thereof," a temporary restraining order enjoining "the government from accessing, searching, relying on, or reviewing" the relevant property during the pendency of his motion, and a permanent injunction prohibiting "the government from making any further use of the improperly seized and retained" materials. *See* CM/ECF No. 1.

Approximately a week later, Richman sought a temporary restraining order enjoining the Government from "searching, using, or relying in any way" on the materials that were seized pursuant to the warrants, "as well as any copies thereof or any materials obtained, extracted, or derived therefrom." *See* CM/ECF No. 9 at 1.

The next day, without awaiting a response from the Government, the Court issued an *ex parte* temporary restraining order (a "TRO") that granted in part and deferred in part Richman's request for relief. *See* CM/ECF No. 10. The Court ordered the Government to "identify, segregate, and secure" the image of Richman's "personal computer that was made in 2017, his Columbia University email accounts, and his iCloud account," as well as "any copies of those files" and "any materials obtained, extracted, or derived from those files." *See id.* at 3. The Court further ordered the Government "not to access" the relevant materials after they were "identified, segregated, and secured, or to share, disseminate, or disclose the covered materials to any person, without first seeking and obtaining leave of th[e] Court." *See id.* at 4.

ARGUMENT

Petitioner's motion is a collateral (and premature) motion to suppress evidence in another criminal proceeding, masquerading as a motion for return of property under Federal Rule 41(g). It is impermissible for a court to enjoin a criminal investigation and potential prosecution in another district by restraining use of evidence to benefit a third party. For those fundamental reasons, the Court should deny Petitioner's motion and dissolve the TRO.

A. A Rule 41(g) motion cannot be used properly as a collateral motion to suppress.

Rule 41(g) of the Federal Rules of Criminal Procedure provides that:

> A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

As the D.C. Circuit has explained, "Rule 41(g) allows the owner of property the government has seized in a search to seek its return."[4] *In re Sealed Case*, 716 F.3d 603, 605 (D.C. Cir. 2013) (dismissing appeal from order denying Rule 41(g) motion for lack of jurisdiction). Thus, "[e]ven if assigned its own docket number in [a] district court," such a "motion is likely a component element in a unified criminal case, rather than an independent proceeding." *See id.* at 605–06 (cleaned up).[5]

While Rule 41(g) provides for "once specific remedy—the return of property," *United States v. Bein*, 214 F.3d 408, 415 (3d Cir. 2000), there exists a class of Rule 41(g) motions that are, effectively, improper suppression motions, "even if the [movant] is not under arrest or indictment." *See Martino v. United States*, 2024 WL 3963681, at *1 (3d Cir. Aug. 28, 2024) (per curiam). Such motions are "tied to [a] criminal prosecution," "challenge[] the basis for the seizure and [seek] the return of allegedly wrongfully seized property," and "implicitly seek[] to prevent the use of that property as evidence." *See id.* at *2; *see also, e.g.*, *United States v. Nocito*, 64 F.4th 76, 81–82 (3d Cir. 2023).[6] Orders denying such motions are not subject to interlocutory appeal. *See In re Sealed Case*, 716 F.3d 603, 605–09; *see also, e.g.*, *United States v. Nocito*, 64 F.4th 76, 81–82 (3d Cir. 2023); *In re Grand Jury*, 635 F.3d 101, 104 (3d Cir. 2011); *In re Warrant Dated Dec. 14, 1990*, 916 F.2d 1241, 1243–44 (6th Cir. 1992).

To determine whether a Rule 41(g) motion is in fact of that character—*i.e.*, a disguised suppression motion—a court must "look beyond the mere effect of the motion to ascertain its true purpose," *In re Sealed Case*, 716 F.3d at 607, so that the court can determine whether the motion "essentially s[eeks] return of seized property or suppression, delay, or some other such purpose apart from the return of the property." *In re Warrant Dated Dec. 14, 1990*, 916 F.2d at 1244. The "question is whether a Rule 41(g) motion is being used for strategic gain at a future hearing or trial," and "factors probative of purpose" include "the movant's need for the property," and "whether granting the motion would have some effect on the presentation of evidence at a future hearing or trial." *See In re Sealed Case*, 716 F.3d at 607–08. In sum, the question is whether the motion seeks "not just the just the equitable return of property, but also the suppression of evidence—*i.e.*, to prevent the government from using the evidence in criminal proceedings." *In re Grand Jury*, 635 F.3d 101, 104 (3d Cir. 2011); *see also, e.g.*, *Nocito*, 64 F.4th at 81 (noting that Rule 41(g) motions "may be misused to hinder criminal prosecutions").[7]

B. Return or destruction of property is not a remedy for a claimed Fourth Amendment violation if there is an ongoing need for the use of the property in a criminal investigation or prosecution.

Richman's misguided use of Rule 41(g) to function as a collateral suppression motion on Comey's behalf leads to doctrinal and conceptual errors. Most fundamentally, the motion conflates Fourth Amendment standards with those applicable to Rule 41(g) motions. They are different and serve different purposes. If a criminal defendant objects that evidence was seized in violation of the Fourth Amendment, a motion to suppress is the proper means of advancing that argument. If a property owner claims an unconstitutional seizure, however, he is not necessarily entitled to its return if the Government seeks to use that property in a criminal investigation or prosecution.

Rule 41(g) is "not intended to deny to the United States the use of evidence permitted by the [F]ourth [A]mendment and federal statutes, even if the evidence might have been unlawfully seized," *see* Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment (describing then-Rule 41(e)), since Rule 41(g) "does *not* constitute a statutory expansion of the exclusionary rule." *United States v. Calandra*, 414 U.S. 338, 349 n.6 (1974) (citing then-Rule 41(e)) (emphasis added). Rather, from a Rule 41(g) perspective, if "the United States has a need for the property in an investigation or prosecution, its retention of the property generally is reasonable." Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment (describing then-Rule 41(e)) (emphasis added).[8]

That's so because "[t]he return of seized property under Rule 41(g) and the exclusionary rule serve fundamentally different purposes. Suppression helps ensure that law enforcement personnel adhere to constitutional norms by denying them, and the government they serve, the benefit of property that is unlawfully seized. Rule 41(g) is concerned with those whose property or privacy interests are impaired by the seizure. Suppression applies only to criminal defendants whereas the class of those aggrieved can be . . . much broader." *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1173 (9th Cir. 2010) (per curiam) (en banc), *abrogated in part on other grounds by Hamer v. Neighborhood Hous. Servs. of Chicago*, 538 U.S. 17, 21 (2017); *see also Demaree v. Pederson*, 887 F.3d 870, 876 (9th Cir. 2018) (per curiam).[9]

Consequently, Rule 41(g) "avoids an all or nothing approach whereby the government must either return records and make no copies or keep originals notwithstanding the hardship to their owner." Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment (describing then-Rule 41(e)). Indeed, the Rule contemplates that, even when a property owner has a valid claim for return, the government will often be entitled to "preserve[] a copy for future use" if the materials "are relevant to ongoing or contemplated investigations and prosecutions." *Id.* Once again, the purpose of a Rule 41(g) motion is not to preclude the use of evidence at a criminal trial. Just the opposite—if the purpose of a motion is to suppress the use of evidence, it is *not* a proper motion under Rule 41(g) at all, but instead an indicator that the matter should be adjudicated through a motion to suppress under the Fourth Amendment and the exclusionary rule.

Accordingly, as the D.C. Circuit has explained, even in the face of a Rule 41(g) motion, the government "can reasonably retain" "evidence in an ongoing criminal investigation or trial"—that is, it may "use seized effects for legitimate law-enforcement purposes." *Asinor v. Dist. of Columbia*, 111 F.4th 1249, 1260–61 (D.C. Cir. 2024); *see also, e.g.*, *United States v. Farrell*, 606 F.2d 1341, 1347 (D.C. Cir. 1979) ("[c]ourts may rightly refuse to return claimed property when . . . the property involved is subject to government retention pending termination of trial"); *Ford-Bey v. United States*, 2020 WL 32991, at *8 (D.D.C. Jan. 2, 2020).

C. A federal court cannot generally enjoin the Government from engaging in a federal criminal investigation or a future prosecution.

Underscoring the same theme, a civil plaintiff may not typically "use a civil action as a vehicle to attack a criminal prosecution." *Mangfort v. U.S Dep't of Justice*, 311 F. Supp. 3d 22, 29 (D.D.C. 2018) (emphasis omitted). The Court of Appeals has "applied this reasoning to hold that in light of traditional equitable principles, and concerns about finality, the subject of a criminal investigation may not bring a civil action to attack an impending federal prosecution," at least in the absence of First Amendment concerns. *See id.* at 30 (citing *Deaver v. Seymour*, 822 F.2d 66 (D.C. Cir. 1987)); *cf. Younger v. Harris*, 401 U.S. 37, 46 (1971). Indeed, the D.C. Circuit could "discover" "no case" in which "a federal court enjoined a federal prosecutor's investigation or presentment of an indictment." *Deaver*, 822 F.2d at 69; *see also Juluke v. Hodel*, 811 F.2d 1553, 1556–57 (D.C. Cir. 1987).

Rather, as *Deaver* explained, a criminal defendant can "raise by motion, but before trial, a defense based on 'defects in the institution of the prosecution,'" *Deaver*, 822 F.2d at 70 (citing then-Fed. R. Crim. P. 12(b)(1)), and the "very existence of [Rule 12 of the Federal Rules of Criminal Procedure] suggested that [a defendant's] challenge is not to be raised in a preindictment civil injunctive action." *See Manafort*, 311 F. Supp. 3d at 30. And that "implication," the Court of Appeals explained, was "strengthened by the traditional reluctance . . . of an equity court to interfere with criminal proceedings." *Deaver*, 822 F.2d at 70. Thus, the D.C. Circuit explained:

> Congress has established as comprehensive set of rules governing federal criminal prosecutions—the Federal Rules of Criminal Procedure. These rules provide adequate, although limited, opportunities for defendants to challenge shortcomings in prosecutorial authority . . . Prospective defendants cannot, *by bringing ancillary equitable proceedings, circumvent federal criminal procedure.*

See Deaver, 822 F.2d at 71 (emphasis added).

Even when the civil plaintiff is not personally the prospective criminal defendant, the same basic logic holds with respect to efforts to foreclose criminal proceedings via preemptive civil actions: "an attempt to restrain the future activities of [a] prosecutor" is impermissible. *See Manafort*, 311 F. Supp. 3d at 32.

D. Under these principles, the Court should not permit Richman to collaterally seek the suppression of evidence in the Comey prosecution via Rule 41(g).

Applying these principles, it is clear that Richman's Rule 41(g) motion is not a valid or meritorious motion for return of property, but instead a transparent effort to suppress evidence in the Comey matter. That is improper multiple times over, and so the Court should deny the motion and dissolve the TRO that it issued on an *ex parte* basis last week

Richman does not genuinely want any property *back*—after all, the government merely has *copies* of his data. Yet he sought an order "directing the government to immediately return or delete certain materials illegally seized and/or retained by the government, *as well as any copies thereof*." CM/ECF No. 1 at 1 (emphasis added). Moreover, he sought (and obtained) an order "temporarily enjoining the government from accessing, searching, relying on, or reviewing" the relevant materials, as well as a permanent injunction prohibiting "the government from making any further use of the improperly seized and retained" materials. CM/ECF No. 1 at 1. His request for "*copies* of the seized documents" and "an order directing the government to cease inspecting the evidence pending a ruling," confirms that his motion seeks suppression of evidence, not the return of property. *In re Grand Jury*, 635 F.3d at 104 (emphasis in original); *see also In re Sealed Case*, 716 F.3d at 606 (noting that the movants in *DiBella* did not simply seek "return of property," but "suppression of evidence at an upcoming trial," and that "[f]ar from being independent of the trial," the motion "was an integral part of trial strategy").

Richman therefore does not seek "just the equitable return of property," but to "prevent the government from using the evidence in criminal proceedings." *In re Grand Jury*, 635 F.3d at 104. Granting his motion would thus clearly "have some effect on the presentation of evidence at a future hearing or trial." *In re Sealed Case*, 716 F.3d at 607; indeed, Richman *expressly requests* that the government be "barred from using evidence" should Comey be indicted again. *See* CM/ECF No. 1-1 at 19; *see also id.* at 16 (asserting that even "responsive" data "no longer b[ears] any relation to a potential criminal activity to be charged").[10]

The close connection to the Comey prosecution is also demonstrated by the *timing* of Richman's motion. Richman does not remotely explain why he did not seek relief via Rule 41(g) after the "Arctic Haze investigation closed in 2021 without any charges being filed." CM/ECF No. 1-1 at 6. But the timing makes perfect sense once one recognizes that this motion is in substance a suppression motion directed at the Comey prosecution if Comey is reindicted. *See In re Sealed Case*, 716 F.3d at 606–07. And Richman is flatly mistaken that "any charges related to the underlying conduct are time-barred" simply because the district court held that the prior indictment was "void" as a result of an appointment defect. CM/ECF No. 1-1 at 24. The statute of limitations has indeed expired on the charges with which the grand jury indicted Comey, but 18 U.S.C. § 3288 expressly allows the United States to reindict "[w]henever an indictment . . . charging a felony is dismissed *for any reason* after the period prescribed by the statute of limitations has expired." *See United States v. Macklin*, 535 F.2d 191, 193 (2d Cir. 1976).

Given that Richman has all but conceded that he seeks a suppression remedy directed at a future prosecution (if Comey is reindicted), it would be unreasonable for the Court to allow Richman to collaterally secure that result. Again, Rule 41(g) is "not intended to deny to the United States the use of evidence permitted by the [F]ourth [A]mendment and federal statutes, *even if the evidence might have been unlawfully seized*," *see* Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment (describing then-Rule 41(e)) (emphasis added), since Rule 41(g) "does *not* constitute a statutory expansion of the exclusionary rule." *Calandra*, 414 U.S. at 349 n.6.[11] And it cannot seriously be disputed that the materials that Richman wants returned or destroyed are "relevant to [an] ongoing or contemplated investigation[] and prosecution[]," *see* Fed. R. Crim. P. 41 advisory committee's note to 1989 amendment; indeed, that's presumably why Richman wants the government to be compelled to destroy any *copies* of those materials. *See In re Grand Jury*, 635 F.3d at 104. That is a remedy that Richman cannot seek, because it is clear under governing law that "[c]ourts may rightly refuse to return claimed property" if "the property involved is subject to government retention *pending termination of trial*." *United States v. Farrell*, 606 F.2d 1341, 1347 (D.C. Cir. 1979) (emphasis added). That will be the case here should the government obtain a new indictment of Comey. If that does transpire, Comey will be free to move to dismiss that new indictment or seek suppression under Rule 12(b) of the Federal Rules of Criminal Procedure. *See Deaver*, 822 F.2d at 70–71.

Finally, it would be unreasonable for the Court to grant Richman the prospective relief he requests—that is, a permanent injunction prohibiting the government "from making any further use" of the relevant materials, *see* CM/ECF No. 1, because granting that relief would have the effect of permitting a civil litigant "to attack an impending federal prosecution." *Manafort v. U.S. Dep't of Justice*, 311 F. Supp. 3d 22, 30 (D.D.C. 2018). Granting Richman the permanent injunction he seeks—and thereby "bar[ing]" "and permanently enjoin[ing]" the Government "from making any further use" of the challenged materials, *see* CM/ECF No. 1; CM/ECF No. 1-1 at 19—would impermissibly "enjoin[] a federal prosecutor's investigation or presentment of an indictment." *See Deaver v. Seymour*, 822 F.2d 66, 69 (D.C. Cir. 1987). And since "an attempt to restrain the future activities of [a] prosecutor" is impermissible, *see Manafort*, 311 F. Supp. 3d at 32, it would be unreasonable for the Court to grant him the requested relief.[12]

For all of these reasons, the Court should deny Richman's motion and dissolve the TRO, because by issuing it the Court has effectively enjoined the government from conducting a criminal investigation and potential prosecution.

CONCLUSION

For the foregoing reasons, the government respectfully requests that Defendant's motion for the return of property be denied, and the temporary restraining order be dissolved.

Respectfully submitted on December 9, 2025.

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Footnotes

[1] The government has provided the concise factual summary herein out of an abundance of caution as a result of the Court's December 6, 2025 temporary restraining order (the "TRO"). *See* CM/ECF No. 9 at 4. Should the Court have meant the TRO to permit the government to use materials obtained via the relevant search warrants as part of this litigation, the government is prepared to provide a more detailed factual summary if necessary.

[2] The investigators sought to obtain evidence of violations of 18 U.S.C. § 641 because it appeared that Richman and Comey were using private email accounts to correspond regarding official government business, *i.e.*, that their correspondence were "record[s]" of the United States. *See id.*

[3] Comey informed the Department of Justice's Office of Inspector General that he "didn't consider" his having directed Richman to provide information to *The New York Times* to be "privileged," and that he "didn't intend to assert any kind of privilege about the direction to Richman." *See* Aug. 2019 Report of Investigation of Former Federal Bureau of Investigation Director James Comey's Disclosure of Sensitive Investigative Information and Handling of Certain Memoranda at 50.

[4] "Ordinarily, Rule 41[(g)] is used to seek the return of seized property after an indictment has been issued." *Ramsden v. United States*, 2 F.3d 322, 324 (9th Cir. 1993); *see also Black Hills Institute of Geological Research v. U.S. Dep't of Justice*, 967 F.2d 1237, 1239 (8th Cir. 1992) (collecting cases). Nevertheless, "district courts have the power to entertain motions to return property seized by the government when there are no criminal proceedings pending against the movant." *See Ramsden*, 2 F.3d at 324. "These motions are treated as civil equitable proceedings and, therefore, a district court must exercise caution and restraint before assuming jurisdiction." *See id.* (internal cleaned up); *see also, e.g.*, *Cameron v. Dist. of Columbia*, 2022 WL 3715779, at *9 (D.D.C. Aug. 29, 2022), *rev'd in part and vacated in part on other grounds by Asinor v. Dist of Columbia*, 111 F.4th 1249 (D.C. Cir. 2024).

A district court is to consider "certain factors" before "reach[ing] the merits of a preindictment Rule 41(e) motion." *Ramsden*, 2 F.3d at 224; *see also Richey v. Smith*, 515 F.2d 1239, 1243-44 (5th Cir. 1975); *In re Singh*, 892 F. Supp. 1, 3 (D.D.C. 1995) (applying factors summarized in *Ramsden*). "These factors include: 1) whether the Government displayed a callous disregard for the constitutional rights of the movant; 2) whether the movant has an individual interest in and need for the property he wants returned; 3) whether the movant would be irreparably injured by denying return of the property; and 4) whether the movant has an adequate remedy at law for the redress of his grievance." *See Ramsden*, 2 F.3d at 325. "Whether to exercise [such] jurisdiction in a given case is subject to the sound discretion of the district court." *Richey*, 515 F.2d at 1243.

[5] Rule 41(g) requires that such a motion "be filed in the district where the property was seized," which explains why Richman's motion was filed in this Court and not in the United States District Court for the Eastern District of Virginia.

[6] An order denying such motion is appealable only if the motion was "solely for return of property and is in no way tied to a criminal prosecution *in esse* against the movant." *See In re Sealed Case*, 716 F.3d at 606 (cleaned up; citing *DiBella v. United States*, 369 U.S. 121, 131–32 (1962)). The Court of Appeals noted that the movants in *DiBella* did not simply seek the "return of property," but "the suppression of evidence at an upcoming trial," and that "[f]ar from being independent of the trial," the motion practice described in *DiBella* "was an integral part of trial strategy." *See In re Sealed Case*, 716 F.3d at 606.

While the above-described cases dealt principally with the question of interlocutory appealability, the principles upon which they relied demonstrate the reasonableness of the Government's position here in retaining evidence and the unreasonableness of Richman's in seeking to circumvent a future prosecution.

[7] The Court of Appeals for the Third Circuit noted that the motion before it was of such a character, since it "request[ed] . . . any *copies* of the seized documents" and "an order directing the government to cease inspecting the evidence pending a ruling." *See In re Grand Jury*, 635 F.3d at 104 (emphasis in original).

Here, as explained below, it is plain that Richman via his Rule 41(g) motion in fact seeks a similar remedy: He requests that the Court issue an order "directing the government to immediately return or delete certain materials illegally seized and/or retained by the government, as well as any copies thereof." *See* CM/ECF No. 1 at 1.

[8] As Richman correctly notes, the Court of Appeals for the District of Columbia Circuit has similarly noted that "the Fourth Amendment does require continuing retention of seized property to be reasonable." *See Asinor v. Dist. of Columbia*, 111 F.4th 1249, 1261 (D.C. Cir. 2024); *see also* CM/ECF No. 1-1 at 10 (defendant's motion for return of property).

[9] "When a motion for return of property is made before an indictment is filed (but a criminal investigation is pending), the movant bears the burden of proving both that the property's seizure was illegal and that he or she is entitled to lawful possession of the property." *United States v. Gladding*, 775 F.3d 1149, 1152 (9th Cir. 2014) (cleaned up). "But that burden of proof changes when the property in question is no longer needed for evidentiary purposes, either because trial is complete, the defendant has pleaded guilty, or the government has abandoned its investigation. Then, the burden of proof shifts and the defendant is presumed to have a right to the property's return, and the government has the burden of demonstrating that it has a legitimate reason to retain the property. The government can rebut the presumption that property ought to be returned by proving a legitimate reason for retaining the property that is reasonable under all of the circumstances." *See id.* (cleaned up).

Here, since, as described below, Richman has sought what is in effect an impermissible suppression remedy—and seeks to prospectively enjoin the Government from conducting a criminal investigation—he has not carried his burden of demonstrating his right to the property's return. Indeed, Richman does not actually seek the property's *return*—he seeks its *destruction*. *See* CM/ECF No. 1.

[10] The principles set forth herein—that a court should not provide a suppression remedy during a Rule 41(g) proceeding and that a federal court should not enjoin a federal investigation or prosecution except when the prosecution would violate the First Amendment—militate strongly against the Court's exercising jurisdiction here. Particularly because Richman seeks extraordinary equitable relief, the Court should exercise significant "caution and restraint before assuming jurisdiction over the motion," *see In re Singh*, 892 F. Supp. 1, 3 (D.D.C. 1995) (cleaned up); indeed, "an equity court" is to be "traditional[ly] reluctan[t]" in "interfer[ing] with criminal proceedings." *Deaver v. Seymour*, 822 F.2d 66, 70 (D.C. Cir. 1987).

Richman claims that the Court should exercise equitable jurisdiction because the Government "retained and searched the seized property through wrongdoing," *see* CM/ECF No. 1-1 at 21, but that is incorrect. A district court must "balance" the factors; no single factor is sufficient. *See United States v. Fed. Ins. Co.*, 2024 WL 1714273, at 2 (9th Cir. Apr. 22, 2024) (cleaned up). Regardless, the Court should be hesitant to assume jurisdiction here even applying the *Ramsden* factors. The Government did not display a callous disregard for Richman's Fourth Amendment rights—it obtained the pertinent property via search warrants. Nor does Richman have a want or need for the property he purportedly wants *returned*—indeed, he wants it *destroyed*. *See* CM/ECF No. 1. And it is difficult to see how Richman faces irreparable injury if the documents are not returned to him—being a potential witness in federal criminal prosecution is not an irreparable injury. *Cf. Deaver*, 822 F.2d at 69 (collecting cases and noting that being charged with a crime—even for an innocent person—is not an irreparable injury). Finally, Richman plainly has an adequate remedy at law—he could bring a *Bivens* action.

[11] To be clear, the government denies that there has been any violation of the Fourth Amendment, but reserves the right to fully litigate that issue in the context of a proper suppression motion in a criminal case. Of particular note, while Richman contends that the government erred by using evidence properly searched for and seized in investigating potential violations of 18 U.S.C. §§ 641 and 793 in ultimately determining to seek an indictment charging Comey with violations of 18 U.S.C. §§ 1001 and 1505, Richman is legally mistaken. There is "no reason why property seized under a valid search warrant, then thus lawfully obtained by the government, may not be used in the prosecution for a crime other than that which may have been described in the affidavit." *Gouled v. United States*, 255 U.S. 298, 311–12 (1921), *abrogated on other grounds by Warden v. Hayden*, 387 U.S. 294, 302 (1967); *see also, e.g.*, *United States v. Hunon*, 428 F.2d 101, 104 (8th Cir. 1970); *United States v. Pugh*, 2015 WL 9450598, at *22 n.15 (E.D.N.Y. Dec. 21, 2015).

Moreover, even if there were a Fourth Amendment violation, it's clear under governing law that even the presentation of such evidence to a grand jury wouldn't be a sufficient basis to dismiss an indictment. *See Calandra*, 414 U.S. at 344–45; *see also Bracy v. United States*, 435 U.S. 1301, 1302 (Rehnquist, J., denying stay application). And if such a claim isn't a basis for that extraordinary remedy, it's similarly no basis for the equitable relief that Richman requests here.

[12] The TRO should be dissolved for substantially the same reasons. Richman is not likely to succeed on the merits of his motion, since, as described above, it is in effect an impermissible collateral motion to suppress, and forcing the Government to destroy the relevant materials at this stage would be unreasonable. Richman will not suffer irreparable harm if the relevant materials are not destroyed. The use of Richman's materials in a prosecution of Comey (if he is indicted) is not a harm to Richman, and potentially being called as a trial witness and questioned about the materials isn't a cognizable harm, either; he can also bring a *Bivens* claim if he so chooses. Moreover, the balance of the equities here doesn't favor Richman, since he's seeking extraordinary equitable relief—that is, a court order requiring the Government to destroy evidence in a pending criminal investigation. Finally, preliminary relief wouldn't serve the public interest, since granting Richman's request would be an impermissible intrusion by a federal court that might delay or hinder a potential federal criminal prosecution.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

1:25-mc-00170-CKK

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PETITIONER DANIEL RICHMAN'S MOTION FOR RETURN OF PROPERTY PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 41(g) AND MOTION FOR TEMPORARY RESTRAINING ORDER

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PRELIMINARY STATEMENT

The government has a vast trove of Professor Richman's personal and professional data and no lawful basis to retain it. Tellingly, the government does not seriously argue that it did not violate Professor Richman's Fourth Amendment rights. Rather, it claims that the Court must disregard its repeated Fourth Amendment violations because it needs the fruits of those violations to prosecute James Comey. In doing so, it misstates the law and seeks to deprive Professor Richman of the only available recourse to stop the government from violating his rights. The Court should reject these arguments, deny the government's motion to dissolve the temporary restraining order ("TRO"), and grant Professor Richman's Rule 41(g) Motion.[1]

The government's position—that it has an unqualified right to indefinitely retain property that it possesses unlawfully so long as it can articulate a use for it—offends basic notions of justice and has no limiting principle. The Rule 41(g) Motion is not a surrogate motion to suppress; it seeks to vindicate real and ongoing violations of Professor Richman's constitutional rights. At present, the government possesses a complete record of Professor Richman's electronic life up to the date of the seizures in 2020: every personal and professional email, every text message, every voicemail message, each financial and medical document, and all the data from every application he used. As one judge has already concluded, the government likely violated Professor Richman's rights in myriad ways. Unlike the criminal defendant and investigation-target movants in each case cited by the government, the Rule 41(g) Motion is Professor Richman's only recourse to prevent further invasions of his privacy, which, based on the government's stated intention to rely on his illegally retained materials, appears virtually certain to occur absent judicial intervention.

ARGUMENT[2]

A straightforward application of Rule 41(g) compels the relief Professor Richman seeks: to order that the government return or delete his Files, and to keep the TRO in place while his Rule 41(g) Motion is pending. Professor Richman is "[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property." Fed. R. Crim. P. 41(g). Thus, he is entitled under the Rule to "move for the property's return." *Id.* The Court has authority to grant this relief as an exercise of its "civil equitable jurisdiction." *Parrott v. District of Columbia*, No. 21 Civ. 2930 (RCL), 2023 WL 2162859, at *10 (D.D.C. Feb. 22, 2023) (quoting *United States v. Comprehensive Drug Testing, Inc. ("CDT")*, 621 F.3d 1162, 1172 (9th Cir. 2010)), *reconsid. denied*, 2025 WL 1836145 (July 3, 2025). The government's purported "need for the property" is of course relevant to the Court's exercise of jurisdiction, but it is not dispositive. *See* Fed. R. Crim. P. 41(e) Advisory Committee's Note to 1989 Amendment (noting that the government's retention of property that it needs "in an investigation or prosecution" is "*generally* . . . reasonable" and instructing courts to apply a reasonableness test to such determinations) (emphasis added). Where, as here, the property in question is *unlawfully* seized, this Circuit's law requires that it "be promptly returned unless it be contraband or statutorily forfeit." *United States v. Hubbard*, 650 F.2d 293, 303 n.26 (D.C. Cir. 1980); *see also* United States' Response in Opposition to Petitioner's Motion for Return of Property and in Support of United States' Motion to Dissolve Temporary Restraining Order ("Gov't Opp.") at 11 n.9, ECF No. 12 (conceding that a movant can prevail on a Rule 41(g) motion where a government investigation is pending if it demonstrates that "that the property's seizure was illegal and that he . . . is entitled to lawful possession of the property") (quoting *United States v. Gladding*, 775 F.3d 1149, 1152 (9th Cir. 2014)).

I. THE GOVERNMENT VIOLATED PROFESSOR RICHMAN'S FOURTH AMENDMENT RIGHTS AND HAS NO BASIS TO RETAIN HIS PROPERTY[3]

A. The Government Fails to Seriously Dispute the Fourth Amendment Violations

As set forth in Professor Richman's prior briefing, the government appears to have violated Professor Richman's Fourth Amendment rights in at least three ways:

- *First*, it violated the terms of the four search warrants by failing to identify and segregate responsive data, resulting in a massive over-seizure of professional and personal data (*see* Rule 41(g) Br. at 13–16; TRO Br. at 18–20);
- *Second*, it kept that data for four years after it had any need for it (*see* Rule 41(g) Br. at 16–17; TRO Br. at 20–22); and
- *Third*, earlier this year, it conducted a warrantless search over that data in connection with its investigation into Mr. Comey, Professor Richman's former client, and specifically targeted and identified privileged communications between Professor Richman and Mr. Comey in connection with that review (*see* Rule 41(g) Br. at 17–18; TRO Br. at 22–23)

These violations were so flagrant that Judge Fitzpatrick found "a reasonable basis to question whether the government's conduct was willful or in reckless disregard of law." *See United States v. Comey ("Comey I")*, -- F. Supp. 3d --, 2025 WL 3202693, at *10 (E.D. Va. Nov. 17, 2025).

The government does not seriously contend otherwise. On page 16 of its brief, it states in a footnote that "the government denies that there has been any violation of the Fourth Amendment." Gov't Opp. at 16 n.11. But its defense of its conduct is limited to the assertion that "property seized under a valid search warrant" may be used "in the prosecution for a crime other than that which may have been described in the affidavit." *Id.* (quoting *Gouled v. United States*, 255 U.S. 298, 311–12 (1921), *abrogated on other grounds by Warden v. Hayden*, 387 U.S. 294, 302 (1967)); *see also* Gov't Opp. at 15 n.10 ("The Government . . . obtained the pertinent property via search warrants."). That may be true. But that is assuredly not what happened here. And it is assuredly not what Judge Fitzpatrick found occurred. His findings—conclusions he came to after conducting a factual inquiry into the government's treatment of the seized and improperly retained property—indicated that: (1) the government violated the terms of the relevant warrants by seizing responsive and nonresponsive data and failing to properly follow the "two step" procedure to conduct a responsiveness review; (2) unlawfully retained a trove of materials that it massively over-seized for years; and (3) conducted a warrantless search over those materials in 2025. *See Comey I*, 2025 WL 3202693, at *5–10. Apart from its blanket denial that the government did not violate the Fourth Amendment, the government does not address those allegations at all.[4]

B. The Government Has No Legitimate Basis to Retain the Files

Because the fruits of these Fourth Amendment violations were illegally obtained, they must be returned. *See Hubbard*, 650 F.2d at 303 n.26. The government also has no basis to retain the image of his computer that it obtained in 2017 with Professor Richman's consent. As the government acknowledges, the continued retention of seized property must be reasonable. *See* Gov't Opp. at 10 n.8 (quoting *Asinor v. Dist. of Columbia*, 111 F.4th 1249, 1261 (D.C. Cir. 2024)). The government's retention of the image is patently unreasonable. As discussed in Professor Richman's previous briefing (and not disputed by the government), the government violated the terms of the consents pursuant to which Professor Richman agreed to the seizure, thus destroying its legal basis to retain the property. *See* Rule 41(g) Br. at 20; TRO Br. at 25. Nor does the government's ongoing investigation into Mr. Comey justify retention of the image. Notwithstanding the government's claim that 18 U.S.C. § 3288 would permit a new indictment of Mr. Comey, *see* Gov't Opp. at 15, there is considerable doubt as to whether Mr. Comey can be prosecuted given the expiration of the statute of limitations. *See United States v. Comey ("Comey II")*, -- F. Supp. 3d --, 2025 WL 3266932, at *14 n.21 (E.D. Va. Nov. 24, 2025) (observing that an invalid indictment cannot toll the statute of limitations). But even assuming a new prosecution would not be time-barred, the government should not be able to keep property that it acquired, retained, and searched unlawfully so it can again rummage through materials it obtained through repeated violations of Professor Richman's constitutional rights.[5] *See* Rule 41(g) Br. at 19–20; TRO Br. at 24–25. To hold otherwise would reward the government for its illegal conduct. *Cf. CDT*, 621 F.3d at 1174 (observing that the government "must not be allowed to benefit from its own wrongdoing by retaining the wrongfully obtained evidence or any fruits thereof").

II. THE COURT HAS THE AUTHORITY TO ORDER THE RETURN OR DELETION OF PROFESSOR RICHMAN'S PROPERTY AND SHOULD DO SO

Perhaps the most glaring weakness in the government's response is its assertion that Professor Richman's Rule 41(g) Motion is improper, and the relief that he requests is categorically unavailable, because the government expresses a desire to use the seized property in question to investigate and prosecute Mr. Comey. Gov't Opp. at 7–9. This assertion is legally wrong, and the government's interpretation of Rule 41(g) would have dire implications if adopted.

A. The Rule 41(g) Motion Is Not "A Collateral Motion to Suppress"

Professor Richman's Rule 41(g) Motion is not a surrogate motion to suppress. The government has not brought any charges against Professor Richman, as it long ago concluded that no charges could be sustained, and the statute of limitations has run with respect to the offenses it investigated in the Arctic Haze investigation. Indeed, the government repeatedly characterizes Professor Richman as, at most, a witness. *See* Gov't Opp. at 15 n.10; *id.* at 17 n.12. A suppression motion is not now, and will never be, available to Professor Richman to challenge the government's violation of his Fourth Amendment rights. Given this, Professor Richman seeks precisely the relief envisioned by Rule 41(g): return of his property.

In arguing that this relief is unavailable, the government relies on *DiBella v. United States*, 369 U.S. 121 (1962), and its progeny, which outline a standard for interlocutory appeals of Rule 41(g) motions. Under *DiBella*, appellate courts can only exercise jurisdiction over Rule 41(g) appeals where the motion is: (1) "solely for [the] return of property" and (2) "in no way tied to a criminal prosecution in esse against the movant." 369 U.S. at 131–32; *see also In re Sealed Case*, 716 F.3d 603, 606 (D.C. Cir. 2013) (discussing the court's ability to "permit appeals" from the district court's ruling on a Rule 41(g) motion, and noting that in that circumstance, the appellant "must show that the decision is independent of any ongoing criminal prosecution, such that its appeal will not lead to a piecemeal review" of the criminal case below). But in every single case cited by the government on this point, the movant was the target of an active investigation or the defendant in a charged criminal case. *See In re Sealed Case*, 716 F.3d at 604, 607 (observing that "the [*DiBella*] Court . . . found that each motion was tied to a criminal prosecution *in esse* because both movants had been arrested and indicted at the time of appeal" and that the movant in the case before it was "the subject of an ongoing grand jury investigation"); *Martinez v. United States*, 2024 WL 3963681, at *1 (3d Cir. Aug. 28, 2024) (movant was "the subject of an ongoing grand jury investigation" and brought a Rule 41(g) Motion tied to "*his* criminal prosecution") (emphasis added); *United States v. Nocito*, 64 F.4th 76, 79 (3d Cir. 2023) (movant entities were owned by person charged with crime); *In re Grand Jury*, 635 F.3d 101, 105 (3d Cir. 2011) (finding *DiBella*'s second requirement met because "the property was seized in connection with an *ongoing grand jury investigation of which the appellant is a target*") (emphasis added); *In re Warrant Dated Dec. 14, 1990 & Recs. Seized From 3273 Hubbard Detroit, Mich. on Dec. 17, 1990*, 961 F.2d 1241, 1242 (6th Cir. 1992) (involving "records . . . sought in connection with a criminal investigation of the appellants for tax evasion, filing of fraudulent tax returns, and conspiracy").

Professor Richman is not a subject, target, or defendant. Though the government elides this fact, it bears repeating: because Professor Richman is not a prospective criminal defendant, he has no suppression remedy to address an ongoing violation of his constitutional rights. His property was seized five years ago, pursuant to warrants tied to a separate and since concluded investigation, and there is no indictment and no pending criminal case. The government acknowledges that, at most, Professor Richman may be a witness in a hypothetical prospective criminal trial. *See* Gov't Opp. at 15 n.10, 17 n.12. Here, for Professor Richman, a Rule 41(g) motion is the only procedural vehicle to prevent an ongoing violation of his rights. In fact, counsel was unable to locate a *single case* where a witness moved pursuant to Rule 41(g) for return of property and the court concluded that the movant's Rule 41(g) motion was an improper attempt to suppress evidence. Furthermore, all of the cases relied on by the government are distinguishable in that none articulates a need for the property based on clear Fourth Amendment violations and infringements on the attorney-client privilege. *See In re Sealed Search Warrant & Application for a Warrant by Tel. or Other Reliable Elec. Means*, 11 F.4th 1235, 1245 (11th Cir. 2021) (finding that the claims of interveners—who were owners, managers, and controllers of a family business that was searched and where the government seized privileged documents—were "sufficiently independent from any forthcoming criminal judgment to pass the *DiBella* test"); *Harbor Healthcare*, 5 F.4th at 600.

The difference between the purpose of a Rule 41(g) motion and a suppression remedy underscores why Professor Richman's Rule 41(g) is procedurally proper.[7] Suppression is solely a forward-looking remedy to deter future violations of the Fourth Amendment. It is filled with exceptions that limit it to that deterrent purpose. Rule 41(g), in contrast, serves to protect a particular person whose property has been unconstitutionally searched or seized against the ongoing injury to his constitutional rights. This action is focused on Professor Richman's constitutional rights. And the government's footnoted reference to *Bivens*, Opp Br. at 15 n.10, rings particularly hollow. The government can hardly justify its ongoing violation of Professor Richman's rights by suggesting he should sue for damages. The Constitution does not permit the government monetize Professor Richman's constitutional rights by remediating violations of those rights with the prospect of future money. Irreparable harm is met in part here because compensatory damages do not make a party whole for the ongoing violation of prospective constitutional rights.

B. Return or Destruction of the Files Is an Available Remedy

The government's reliance on *United States v. Calandra*, 414 U.S. 338 (1974), and an Advisory Committee's Note to Rule 41, to suggest that Professor Richman's requested relief is improper are also deeply misguided. *See* Gov't Opp. at 10. In *Calandra*, the Supreme Court declined to expand the exclusionary rule to grand jury proceedings, in part because the putative defendant would have an opportunity to challenge the use of the illegally seized evidence through a suppression motion if a case were ultimately brought against him. *Id.* In so doing, *Calandra* also found that Rule 41(e), the precursor to Rule 41(g), was not an automatic end-run around its holding that could be used to bar the use of the fruits of an illegal search in a grand jury. *See id.* at 351–52. Consistent with *Calandra*, the 1989 amendment to Rule 41 removed language that allowed Rule 41(g)'s precursor to operate like an exclusionary rule, instead replacing it with a "reasonableness" test. Fed. R. Crim. Pro. 41 Advisory Committee's Note to 1989 Amendment ("the exclusionary provision is deleted" and opting instead "for a reasonableness approach" in deciding motions for the return of property). What the government fails to note is that the revised rule contemplated precisely the remedy that Professor Richman is seeking through his Rule 41(g) Motion. *See id.* ("[I]n some circumstances . . . equitable considerations might justify an order requiring the government to return or destroy all copies of records that it has seized."). Such considerations powerfully exist here. Professor Richman does not suggest that Rule 41(g) should be applied to automatically bar the use of his seized property by the government. Instead, he describes the facially unreasonable nature of the government's years-long retention and abuse of that property to support the conclusion that the remedy Professor Richman seeks (return or deletion of the retained property) is a proper use of Rule 41(g) and the court's equitable powers.[8] *See generally* Rule 41(g) Br.; *Asinor* 111 F.4th at 1261; Gov't Opp. at n.8.

C. The *Ramsden* Factors Weigh Heavily in Professor Richman's Favor

The government mentions the *Ramsden* factors only in passing, Gov't Opp. n.10. That's telling. For the reasons set forth previously, those factors weigh strongly in favor of exercising jurisdiction and granting Rule 41(g) motion. The severity of government's constitutional violations amounts to, at minimum, callous disregard. *See* Rule 41(g) Br. at 21–23; TRO Br. at 26–27; *see supra* Section I. Where, as here, the callous disregard factor is met, that is sufficient in and of itself to exert equitable jurisdiction, and it is not necessary to balance the other *Ramsden* factors that otherwise apply to a Court's decision to exert equitable jurisdiction. *See* Rule 41(g) Br. at 20–21; TRO Br. at 25–26.

Though the court need not reach them, the remaining *Ramsden* factors (individual interest, irreparable harm, and no adequate remedy at law) also weigh in Professor Richman's favor: he has an individual interest in and need for the property; he would be irreparably injured if it were not returned; and he has no adequate remedy at law. *See* Rule 41(g) Br. at 23–26; TRO Br. at 27–30.

Without citing authority, the government suggests that Professor Richman does not demonstrate an individual "want or need for [his] property" because he requests that copies of that data be "*destroyed*." Gov't Opp. at 15 n.10. But Professor Richman has articulated at length his individual privacy, attorney-client privilege, and constitutional interests in the property, and the many irreparable harms caused by the government's retention of and rummaging through this data, which again includes:

- Copies of his privileged communications;
- Non-privileged but confidential professional communications, including with and about judges, students, colleagues, and journalists;
- Sensitive personal communications, including financial documents, medical records, personal photographs; and
- Full application data.

Rule 41(g) Br. at 23–25; TRO Br. at 27, 30–36. The articulated irreparable harm is not, as the government mistakenly (and wantonly) suggests, "being a potential witness in federal criminal prosecution." *Compare* Gov't Opp at n.10, *with* Rule 41(g) Br. at 23–26 (describing how the nature of the seized documents and communications, as well as the deprivation of Fourth Amendment rights, even for a short time, support a finding of irreparable harm); TRO Br. at 31–33 (same).

As explained in his prior briefing, Professor Richman seeks the return and destruction of government-retained copies of his electronic data *not* because he is attempting to enjoin a government investigation, *compare* Gov't Opp. at 13–14, but instead because deletion is the only true remedy for the continuing constitutional violations at issue, with TRO Mot. 27-30. It is well-accepted that electronic data is different from other types of "personal items such as a cigarette pack, a wallet, or a purse." *Matter of the Search of Twenty-Six (26) Digital Devices & Mobile Device Extractions That Are Currently in the Possession of L. Eef't In Washington D.C.*, No. 21-SW-233 (GMH), 2022 WL 998896, at *7 (D.D.C. Mar. 14, 2022) ("[T]he rationales guiding the search-incident-to-arrest cases . . . have little relevance to digital data stored on a cell phone," which implicate "weighty privacy-related concerns" given their "immense storage capacity"). It simply cannot be the case that the government can simply retain copies of the entirety of Professor Richman's electronic files and data up to its seizure in 2020 in perpetuity and continue to conduct unconstitutional, warrantless searches of that data years after the fact.

The *Ramsden* factors also demonstrate why granting Professor Richman's Rule 41(g) motion and the return of the illegally seized evidence does not operate as an injunction barring the government from investigating or prosecuting a crime. The judicial reasoning articulated in the *Manafort* case is in direct alignment with the *Ramsden* factors and their application here. In *Manafort*, the court held that "the subject of a criminal investigation may not bring a civil action to attack an impending federal prosecution." *Manafort v. U. S. Dep't of Just.*, 311 F. Supp. 3d 22, 30 (D.D.C. 2018) (citing *Younger v. Harris*, 401 U.S. 37, 43-44 (1971)). This policy was based on "equity jurisprudence," as courts should not "act to restrain a criminal prosecution, when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Id.* at 29. Professor Richman is not the subject of a criminal investigation, and he has no remedy at law.[9] *See* Rule 41(g) Br. at 23; TRO Br. at 30. And he has clearly articulated irreparable harm that will occur if denied equitable relief. TRO Br. at 30.

Ordering the return of (egregiously) illegally seized, retained, and searched evidence here would not operate as an injunction on "a federal prosecutor's investigation or presentment of an indictment." *Cf.* Gov't Br. at 12-13; *Deaver v. Seymour*, 822 F.2d 66, 69 (D.C. Cir. 1987); *Juluke v. Hodel*, 811 F.2d 1553, 1556-57 (D.C. Cir. 1987) (in a case where "the Government [was] seeking to extend the holding of *Younger v. Harris* . . . that a federal court will not enjoin an ongoing criminal proceeding in state court," finding "no support for such an extension" and holding that "when the civil action does not seek to enjoin an ongoing prosecution and where the movants are not being prosecuted, an injunction may issue"). The government is entirely free to investigate potential crimes and make a grand jury presentation. To the extent that the government still has the right to seek evidence, there is no showing that it cannot do so via proper means. But Professor Richman should not be required to suffer ongoing constitutional violations because the government chose to take an illegal route to seizing and searching evidence and refuses to amend its errors. And the government's unconstitutional actions should not be rewarded.

III. THE TRO SHOULD REMAIN IN PLACE PENDING RESOLUTION OF PROFESSOR RICHMAN'S RULE 41(g) MOTION

Largely for the reasons set forth in Sections I and II(C) above, the TRO should remain in place until the Court resolves the Rule 41(g) Motion. Professor Richman is likely to succeed on the merits given the government's Fourth Amendment violations and the application of the *Ramsden* factors. *See* TRO Br. at 13–30; Sections I, II(C), *supra*. Furthermore, Professor Richman would likely suffer irreparable harm if the TRO were lifted. *See* TRO Br. at 30–36; Section II(C), *supra*. In addition, the final two TRO factors—balancing the equities and the public interest—weigh strongly in favor of the TRO. While the government argues, without citing authority, that the TRO goes against the public interest because "granting Richman's request would be an impermissible intrusion by a federal court that might delay or hinder federal criminal prosecution," Gov't Opp. at 17 n.12, "the government has no legitimate interest in acting unlawfully," *N.S. v. Hughes*, 335 F.R.D. 337, 355 (D.D.C. 2020). The government should not be able to keep illegally obtained and retained evidence, regardless of its claimed need. *See* TRO Br. 36–38.

CONCLUSION

For the reasons stated herein and in Professor Richman's prior briefing, the Court should: (1) order the government to immediately return or delete Professor Richman's Files and all copies thereof; (2) enjoin the government from making any further use of the improperly seized or retained materials; and (3) deny the government's motion to dissolve the TRO.

Dated: December 9, 2025
New York, NY

Respectfully submitted,

By: /s/ Nicholas J. Lewin
Nicholas J. Lewin

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Footnotes

[1] Capitalized terms have the meanings set forth in Petitioner's Memorandum of Law in Support of Petitioner Daniel Richman's Motion for Return of Property Pursuant to Federal Rule of Procedure 41(g) ("Rule 41(g) Br."), ECF No. 1-1, and Memorandum of Law in Support of Petitioner Daniel Richman's Motion for Temporary Restraining Order ("TRO Br."), ECF No. 9-1.

[2] Professor Richman disputes the government's presentation of the facts, particularly those with respect to its description of the investigation and indictment of Mr. Comey. Professor Richman reserves his rights to further correct the record on those points as needed at an evidentiary hearing and reserves his request for such a hearing here.

[3] Professor Richman argues that the burden of proof in this Rule 41(g) case lies with the government, not him as the movant. *See United States v. Wright*, 49 F.4th 1221, 1225 (9th Cir. 2022). The original investigation for which the property was seized ended in 2021 (a fact the government does not contest, as they would need to in order to shift the burden back to Professor Richman). *See* Rule 41(g) Br. at 11 (describing Rule 41(g) burden shifting), 16–17 (describing end of investigation). But, even if the court were to find that Professor Richman bears the burden as the movant here, because the government purportedly needs the property for evidentiary purposes, Professor Richman meets that burden of demonstrating that the property's seizure was illegal and that he is entitled to its return. *See Wright*, 49 F.4th at 1225. If the government had a legal basis to retain and research the files, this would have been reflected in Judge Fitzpatrick's opinion. Instead, Judge Fitzpatrick determined the opposite—that the government's behavior with respect to the files likely violated the Fourth Amendment. TRO Br. at 19–21. As any materials seized in connection with the warrants, or in connection with the 2025 warrantless search, were illegally seized. So, they must be promptly returned under this Circuit's law.

[4] If the Court finds the government's blanket denial sufficient to create an issue of fact, the proper recourse is an evidentiary hearing. *See* Rule 41(g) Br. at 27; TRO Br. at 27 n.16.

[5] It should go without saying that the government does not have a right to retain illegally seized property simply because it may or may not have the ability to legally seek evidence through another channel.

[6] *In re Sealed Case* is highly distinguishable—and has been so distinguished by the Fifth Circuit, in *Harbor Healthcare Sys., L.P. v. United States*, 5 F.4th 593 (5th Cir. 2021), which granted a Rule 41(g) Motion in circumstances much more similar to those at issue in Professor Richman's case and stated as follows: "The government relies on *In re Sealed Case* . . . to argue that Harbor's Rule 41(g) motion is really about suppression, not return of property. In *Sealed Case*, however, 'the movant ha[d] already recovered the property from the government,' so the Rule 41(g) motion could not be "'solely' for its return.' Indeed, the court determined that 'the attorney–client privilege [dispute was] moot.' Here, by contrast, the government has not yet returned Harbor's property and is instead refusing to do so." 5 F.4th at 600 n.4 (citations omitted).

[7] The government criticizes the timing of Professor Richman's motion, suggesting that it demonstrates an improper nexus to the *Comey* case. *See* Gov't Opp. at 15. However, Professor Richman only became aware of the facts that underlying his motion through recent disclosures in the *Comey* case. Prior to those disclosures, any person, especially a former prosecutor and criminal law professor would assume the following: that (1) at a minimum, all search warrant returns would have been segregated and all non-responsive materials would be placed under seal and categorically inaccessible to anyone in the government; after the Arctic Haze investigation was closed without any charges, all of the materials, including responsive materials, would have been destroyed and not kept as a repository for some unknown future use; and (3) even if the government had retained responsive and non-privileged materials in the case file of a case that had been closed for more than four years, any attempt to re-search that material would have to be presented to a federal judge to rule on probable cause, bless an appropriate privilege filter review, and limit the government's search to evidence relevant to the offenses for which probable cause was shown. Up until recently, Professor Richman had confidence that the Department of Justice's treatment of his files would have complied with the basic tenets of the United States Constitution.

[8] The government also cites *United States v. Bein* for the proposition that "Rule 41(g) provides for 'once [sic] specific remedy—the return of property,'" presumably suggesting that the remedy of deletion of electronic copies is somehow not contemplated. *United States v. Bein*, 214 F.3d 408, 415 (3d Cir. 2000); Gov't Opp. at 8, 13 (suggesting Richman does not "genuinely want any property back"). The *Bein* decision, however, was issued prior to the revision of Rule 41(g) to more specifically cover electronic materials. That revision specifically considered "the ability of an aggrieved party to pursue the return of property associated with electronic media," and noted the Rule's "appl[ication] to electronic storage media." Search Warrants for Electronic Materials Final Report, Pennsylvania Court System (July 31, 2017), https://www.pacourts.us/assets/opinion/Supreme/out/492/crim-rpt.pdf?; *see also* Fed. R. Crim. Pro. 41 Advisory Committee's Note to 1989 Amendment (discussing potential remedy of deletion); *see generally* Note, *Digital Duplications and the Fourth Amendment*, 129 Harv. L. Rev. 1046 (2016) (government seizures of electronic data violate the Fourth Amendment).

[9] As noted elsewhere, the suggestion that a *Bivens* action provides adequate remedy at law for ongoing prospective constitutional violations, like those occurring here, is baseless.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Misc. Action No. 25-0170 (CKK)

ORDER
(December 10, 2025)

In response to this Court's [10] Order dated December 6, 2025, Attorney Robert K. McBride sent an email to this Court's Chambers at approximately 11:58 a.m. ET on December 8, 2025, attaching a document certifying the Government's compliance with the Court's [10] Order, along with proposed Notices of Appearance for himself and Attorneys Todd W. Blanche and Lindsey Halligan.[1] Petitioner Daniel Richman's counsel received a copy of these attachments by email soon thereafter. Attorney McBride explained in the body of his email to Chambers that counsel were "in the process of obtaining" electronic filing privileges in this District.

As a general matter, providing documents by email is not a substitute for filing them on the docket, and doing so does not make them part of the official record of the case. To date, the Government's certification of compliance with this Court's [10] Order has not been filed on the docket, and Attorneys Blanche, Halligan, and McBride have not yet formally entered their appearances.

On December 9, 2025, Attorney John Bailey filed the Government's [12] Response in Opposition to Petitioner Daniel Richman's Motion for Return of Property and Motion to Dissolve Temporary Restraining Order through the CM/ECF system. Attorney Bailey is therefore listed on the docket as appearing on behalf of the Government. *See also* LCvR 5.4(b)(4) ("The use of a CM/ECF password to login and submit documents creates an electronic record that operates and serves as the signature of the person to whom the password is assigned for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court."). However, Attorney Bailey's electronic signature does not appear in the body of the Government's [12] Response and Motion—only the electronic signatures of Attorneys Blanche, Halligan, and McBride appear—and Attorney Bailey has not filed a notice of appearance.

To ensure that counsel who are accountable for the Government's representations and legal positions in this matter are accurately identified in the official record of this case, it is **ORDERED** that all counsel of record for the Government shall file notices of appearance no later than **10:00 a.m. ET tomorrow, December 11, 2025**.

It is further **ORDERED** that, no later than the same deadline, **10:00 a.m. ET tomorrow, December 11, 2025**, the Government shall file on the docket its certification of compliance with this Court's [10] Order dated December 6, 2025.

SO ORDERED.

Dated: December 10, 2025

Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

[1] The document that the Court is construing as a proposed Notice of Appearance for Attorney Halligan was attached with the filename "NOA Halligan," but the substance of the document appeared to be a Notice of Appearance for Attorney Blanche. Another document attached to Attorney McBride's email, entitled "NOA Blanche" was identical to this document except that it omitted Attorney Blanche's Bar number.

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Leave to file GRANTED.

12/12/2025
James E. Boasberg Date
Chief Judge

December 11, 2025

BY EMAIL

Honorable James E. Boasberg
Chief Judge
United States District Court for the District of Columbia
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, NW
Washington, DC 20001

Re: Issues Relating to the Testimony of Erez Reuveni in *J.G.G. et. al. v. Trump,* Case No.: 1:25-cv-00766-JEB

Dear Judge Boasberg:

We represent Erez Reuveni, the former Department of Justice (DOJ) lawyer who was unlawfully fired by Attorney General Pamela J. Bondi on April 11, 2025, after being previously suspended and placed on administrative leave on April 5, 2025. We write this letter to bring to the Court's attention various issues relating to Mr. Reuveni's testimony in this matter, which is scheduled for Monday, December 15, and which we respectfully request the court resolve before Mr. Reuveni testifies.

In its December 8 Order, the Court directed the plaintiffs to "attempt to secure the presence of Erez Reuveni for testimony on December 15, 2025, at 9:30 am. On December 10, pursuant to the Court's Order, plaintiffs' counsel served a subpoena for testimony in this proceeding on December 15. Mr. Reuveni fully intends to comply with the subpoena and the Court's order, subject to resolution of the issues raised below.

Mr. Reuveni anticipates that the Court and the parties will ask Mr. Reuveni questions that may implicate the attorney-client privilege that existed between Mr. Reuveni and his client, the United States government, through April 5, 2025, the date he was suspended. The cause of his suspension and termination was his candor and fidelity to his oath and his professional obligations in this case before you; the matter of *D.V.D. v. U.S. Dep't of Homeland Sec.,* 25-cv-10676 (D. Mass.); and, most notably, the case of *Abrego Garcia v. Noem,* 8-25-cv-00951-PX (D. Md.). In the *Abrego Garcia* case, Mr. Reuveni acknowledged that Kilmar Armando Abrego Garcia, a Maryland resident, had been mistakenly and improperly deported by the United States to the Government Terrorism Confinement Center (CECOT) in El Salvador.

On June 24, 2025, pursuant to 5 U.S.C. §§ 1213 and 2302, Mr. Reuveni filed a 27-page protected whistleblower disclosure with the Senate and House Judiciary Committees, the Department of Justice Office of the Inspector General, and the Office of Special Counsel (ECF 158, Attachment 1). That disclosure focused on the actions of members of DOJ leadership to resist court orders that would block or impede potentially illegal efforts to deport non-citizens. Mr. Reuveni also provided contemporaneous emails and text messages supporting his disclosure. In making his disclosure, Mr. Reuveni relied on the advice of lawyers and legal ethics experts who concluded that it was permissible for Mr. Reuveni to share information that otherwise would arguably be protected from disclosure, and to do so under exceptions to Rule 1.6, including but not limited to Rule 1.6(e)(2)(B), which permits government lawyers to disclose information "when permitted or authorized by law."

The rule of professional conduct that applies to Mr. Reuveni's scheduled testimony in this matter is Rule 1.6(e)(2)(A) of the DC Rules of Professional Conduct. That rule specifically authorizes the disclosure of otherwise protected client confidences "when required by…court order." A Comment to that rule explains that a lawyer who is "called as a witness to give testimony concerning a client…may comply with the final orders of a court…requiring the lawyer to give information about the client."[1]

Accordingly, in order to provide testimony while abiding by his ethical obligations, Mr. Reuveni needs the Court to issue a "final order" at the outset of Mr. Reuveni's testimony, pursuant to DC Rule 1.6, concerning the scope of that testimony and what the Court and the parties may permissibily ask Mr. Reuveni. Further, because Mr. Reuveni is affiliated with neither of the parties in this matter, and is appearing at the Court's direction and pursuant to a subpoena, we ask that his counsel be permitted to participate in the proceedings as needed to protect Mr. Reuveni's rights and interests.

We await any further instructions and directions from the Court.

Respectfully submitted,

Michael R. Bromwich

[1] DC Rule 1.6 Comment [28]

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, **Plaintiffs,** **v.** **DONALD J. TRUMP, *et al.*,** **Defendants.**	**Civil Action No. 25-766 (JEB)**

ORDER

On December 8, 2025, the Court ordered that live witness testimony would be warranted in its inquiry into whether a contempt referral is appropriate. See ECF No. 200 (Order). The Government now moves for reconsideration, asking the Court not to conduct such hearing or, alternatively, to greatly restrict testimony. See ECF No. 201 (Recon. Mot.). The Court will deny the Motion.

To begin, this inquiry is not some academic exercise. Approximately 137 men were spirited out of this country without a hearing and placed in a high-security prison in El Salvador, where many suffered abuse and possible torture, despite this Court's order that they should not be disembarked. See ECF No. 81 (Mem. Op.); Hum. Rts. Watch, "You Have Arrived in Hell": Torture and Other Abuses Against Venezuelans in El Salvador's Mega Prison (2025), https://perma.cc/8H6N-MJX4. The question the Court must now answer is whether this occurred via contumacious conduct by Government officials. See United States v. Young, 107 F.3d 903, 907 (D.C. Cir. 1997) (setting out elements including willfulness).

The *en banc* D.C. Circuit has authorized this Court to proceed with its contempt inquiry, see J.G.G. v. Trump, 2025 WL 3198891, at *4 (D.C. Cir. Nov. 14, 2025) (*en banc*) (Pillard, Wilkins, and Garcia, JJ., respecting denial of rehearing *en banc*) (district court may "proceed . . . within his sound discretion" to obtain factual information); id. at *5 n.1 (Pan, J., dissenting from denial of rehearing *en banc*) ("Six of the eleven active judges on this court opine that the district court did not err."), which requires a consideration of officials' state of mind. The cursory declarations Defendants have provided, see ECF Nos. 198-1 (Declaration of Secretary Noem); 198-2 (Declaration of Acting General Counsel of DHS Mazzara); 198-3 (Declaration of Deputy Attorney General Blanche); 199 (Declaration of Emil Bove), offer little to assist such consideration. The Circuit has also vacated this Court's prior probable-cause determination. See J.G.G. v. Trump, No. 25-5124 (D.C. Cir. Aug. 8, 2025) (order vacating contempt-related order). Although this does not compel the Court to return to square one, it must reach a fresh conclusion. This is particularly warranted where significant new information — in the form of Erez Reuveni's whistleblower complaint, see ECF No. 158-1 (Letter) — has come to light since the Court's probable-cause finding. Much of his account bears directly on the question of willfulness. In addition, given their close familiarity with the case, Plaintiffs are uniquely positioned to assist the Court, and it will permit them to do so. (They would, conversely, have no role were an actual contempt prosecution initiated following a potential referral from this Court.)

While the Government also asserts that the Court's inquiry should be cabined to March 15, that is too restrictive. What occurred at the March 14 meeting with Department of Justice attorneys (including Emil Bove, Erez Reuveni, and Drew Ensign), for example, may well help to illuminate officials' decisions the next day and their mental states. Nor would everything said at such meeting necessarily be covered by the attorney-client privilege — the sole privilege Defendants have invoked — inasmuch as no client was allegedly present, and a policy (rather than legal advice) was apparently discussed. In any event, to the extent that future contempt was being considered, the crime-fraud exception would vitiate any privilege.

The Court will remain mindful of attorney-client privileges that may pertain to other communications as the testimony proceeds, and the Government will be free to object to particular questions. At this stage, however, Plaintiffs have pointed out numerous reasons why the privilege might well not apply. See ECF No. 205 (Pl. Resp.). The Court, furthermore, will limit the scope of the testimony to the current case and not permit questions regarding the particulars of other cases that the witnesses may have worked on, unless there is some direct showing of relevance. In sum, the Court sees no reason to delay the entire hearing while waiting for further, unspecified appellate guidance, as the Government also demands.

The Court, accordingly, ORDERS that Defendants' [201] Motion to Reconsider is DENIED.

/s/ James E. Boasberg
JAMES E. BOASBERG
Chief Judge

Date: December 12, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LIYANARA SANCHEZ, as next friend on behalf of FRENGEL REYES MOTA, *et al.*,

Petitioners–Plaintiffs,

J.G.G., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Respondents–Defendants.

Case No: 1:25-cv-00766-JEB

MOTION FOR STAY PENDING RESOLUTION OF DEFENDANTS' RECONSIDERATION MOTION AND PETITION FOR WRIT OF MANDAMUS

This Court has compelled testimony, to begin on Monday morning of next week, in support of its ongoing inquiry into potential criminal contempt. ECF 200. Defendants have moved for reconsideration of that order, or in the alternative for a protective order. ECF 201. Late last night, Plaintiffs filed a lengthy opposition that raises a host of new arguments, including sweeping claims about the waiver or vitiation of the attorney-client privilege. ECF 205. In light of the time exigency, Defendants have also filed a petition for writ of mandamus with the Court of Appeals. Defendants now respectfully ask the Court to stay next week's proceedings pending its resolution of the reconsideration motion, and pending the D.C. Circuit's resolution of the mandamus petition. Given that this contempt inquiry is a purely retrospective evaluation of events that occurred nine months ago, there is no reason why testimony needs to be compelled next week and before these serious issues are considered and adjudicated by this Court and the Court of Appeals.

Dated: December 12, 2025

Respectfully submitted,

Brett A. Shumate
Assistant Attorney General

/s/ Tiberius Davis
Tiberius Davis
Counsel to the Assistant Attorney General
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U.S. Department of Justice
(202)-514-4357

Anthony Nicastro
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Counsel for Respondents–Defendants

Ordinance Establishing Fees for Municipal Swimming Pool Passes

Section 1. Purpose. The purpose of this ordinance is to establish fees for annual passes to the Municipal Swimming Pool, in order to help defray the cost of operating and maintaining the pool.

Section 2. Definitions. For the purposes of this ordinance, the following terms shall have the meanings ascribed to them: "Pool" means the Municipal Swimming Pool. "Pass" means an annual pass to the Pool. "Resident" means a person who lives within the city limits. "Non-resident" means a person who does not live within the city limits.

Section 3. Fees. The annual fee for a Pass shall be as follows: (a) For a Resident, $40. (b) For a Non-resident, $60. (c) For a Resident who is a senior citizen, $25. (d) For a Non-resident who is a senior citizen, $35. (e) For a family of four or more, $120.

Section 4. Payment. Fees shall be paid in full before a Pass is issued. Payment may be made by cash, check, or credit card.

Section 5. Refunds. No refunds shall be given for a Pass that is lost, stolen, or damaged. A replacement Pass may be obtained for a fee of $5.

Section 6. Effective Date. This ordinance shall take effect on January 1, 2025.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Misc. Action No. 25-0170 (CKK)

ORDER
(December 15, 2025)

The Court is in receipt of the Government's [22] Emergency Motion to Clarify and Modify this Court's [20] Order granting Petitioner Daniel Richman's [1] Motion for Return of Property. The Government requests a seven-day extension of its deadline to certify compliance with this Court's Order, as well as several technical clarifications or modifications to the scope of the Order. Petitioner Richman does not object to the Government's request for a seven-day extension. The Government represents that, until the continued deadline that it requests, it "will continue to comply with its obligation pursuant to the Court's December 6, 2025 order not to access or share the covered materials without leave of the Court." Gov't's Mot., Dkt. No. 22, at 11.

The Government's [22] Motion, which was filed approximately one hour before the deadline for the filing of a certification of compliance set forth in this Court's [20] Order, raises a variety of issues related to the handling of classified information and information that may be subject to the Government's own privileges, including the attorney-client privilege and the deliberative process privilege. The Government could have—and should have—raised many of these issues earlier in its initial Response to Petitioner Richman's [1] Motion for Return of Property, but it did not do so. The Court will clarify its [20] Order at greater length by separate order and, if appropriate, will request further briefing from the parties. For now, the Court notes three important clarifications:

On the present record, it is the Court's understanding that Petitioner Richman has already consented to the deletion of classified material that may have been included in the image of his personal computer that is at issue here. Accordingly, the Court did not order, and is not ordering, the return of classified information to Petitioner Richman.

Further, this Court's Order directed the return of Petitioner Richman's own materials (and any copies of those materials), *not* any derivative files that the Government may have created. *See* Order, Dkt. No. 20, at 1 (directing the return of the original materials, copies of those materials, and any materials "directly obtained or extracted" from them); *see also id.* at 41 (explaining that the Court would not bar the Government from "using or relying on" the relevant materials in a separate investigation or proceeding). Accordingly, compliance with the Court's Order will not intrude upon any of the Government's privileges.

Finally, it was not the Court's intention to require a personal certification of compliance by the Attorney General of the United States. The Court's Memorandum Opinion makes clear that a designee of the Attorney General could discharge this responsibility. *See* Mem. Op., Dkt. No. 21, at 4 ("The Court shall further ORDER the Attorney General of the United States or her designee to certify . . . ."). The Court also understood the certification of compliance to be among the responsibilities that the Attorney General may delegate in the routine performance of her duties. Consistent with these understandings, the Court shall clarify its Order to specify that a designee of the Attorney General may certify compliance.

For the foregoing reasons, upon consideration of the Government's [22] Motion, and for good cause shown, it is **ORDERED** that this Court's [20] Order dated December 12, 2025, is **CLARIFIED** and **MODIFIED**, as follows:

The deadline for the Government's certification of compliance is **CONTINUED**, *nunc pro tunc*, to **4:00 p.m. ET on December 22, 2025**. No later than that time, the Attorney General or her designee shall certify, with specificity, that the Government has complied with this Court's [20] Order dated December 12, 2025, as clarified and modified by this Order and any subsequent Order of this Court.

SO ORDERED.

Dated: December 15, 2025

Colleen Kollar-Kotelly
COLLEEN KOLLAR-KOTELLY
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DANIEL RICHMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Misc. Action No. 25-0170 (CKK)

ORDER
(December 16, 2025)

Upon further consideration of the Government's [22] Emergency Motion to Clarify and Modify this Court's [20] Order granting Petitioner Daniel Richman's [1] Motion for Return of Property, the Court concludes that it would benefit from further submissions from the parties on issues relevant to determining the appropriate remedy in this case, including determining what property the Government must return to Petitioner Richman under Federal Rule of Criminal Procedure 41(g).[1] To ensure the prompt resolution of the Government's [22] Emergency Motion, the Court will require that these submissions be made on an expedited basis.

First, the Government states in its [22] Emergency Motion that it "would be willing to recommend best practices on safekeeping evidence" that will be deposited with the United States District Court for the Eastern District of Virginia, including protecting classified information, preserving an uninterrupted chain of custody, and ensuring the availability of a witness who can establish chain of custody in a future proceeding. *See* Gov't's Mot., Dkt. No. 22, at 6. It is **ORDERED** that, no later than **9:00 a.m. ET on Wednesday, December 17, 2025**, the Government shall file a supplement to its [22] Emergency Motion that addresses these topics.

Second, the Government argues in its [22] Emergency Motion that the Court's Order "appears to require the Government to delete or destroy evidence originally, and lawfully, obtained pursuant to search warrants issued by the U.S. District Court for the District of Columbia in 2019 and 2020." Gov't's Mot., Dkt. No. 22, at 5. To be clear, the Court has not ordered the Government to delete or destroy any evidence; instead, it has ordered the Government to return certain materials to Petitioner Richman, while depositing others with a third-party custodian for safekeeping. However, to ensure that the remedy awarded in this case is appropriately tailored to the facts, the Court would benefit from more factual details regarding the Government's execution of the search warrants issued in this District in 2019 and 2020. *Id.* Accordingly, it is **ORDERED** that, no later than **10:00 a.m. ET on Wednesday, December 17, 2025**, the Government shall file with the Court a brief response to the following questions:

(1) Does the Government have in its possession a complete copy of any of the following:
   (i) the "forensic image" of Petitioner Richman's personal computer hard drive that the Government was authorized to search under the warrant issued in this District on August 27, 2019;
   (ii) the information disclosed by Columbia University to the Government pursuant to the warrant issued in this District on October 22, 2019;
   (iii) the information disclosed by Apple to the Government pursuant to the warrant issued in this District on January 30, 2020; or
   (iv) the "contents of a hard drive . . . containing backup files of one Apple iPad 4 and one Apple iPhone 5S" that the Government was authorized to search under the warrant issued in this District on June 4, 2020?

(2) Under each of the four search warrants at issue, the Government was authorized to seize only responsive material, which constituted a subset of the information it was permitted to search. Did the Government create a separate file, disk, hard drive, or any other segregated collection of responsive material for any of the following:
   (i) the material seized from Petitioner Richman's personal hard drive pursuant to the warrant issued in this District on August 27, 2019;
   (ii) the material seized from Petitioner Richman's Columbia University email accounts pursuant to the warrant issued in this District on October 22, 2019;
   (iii) the material seized from Petitioner Richman's iCloud account pursuant to the warrant issued in this District on January 30, 2020; or
   (iv) the material seized from the backup files of Richman's Apple iPad 4 and Apple iPhone 5S pursuant to the warrant issued in this District on June 4, 2020?

Third, the Court would benefit from a response from Petitioner Richman clarifying whether he seeks the return of (1) material that the Government seized pursuant to the four search warrants issued in this District in 2019 and 2020 that is responsive to those warrants, and/or (2) any classified material that the Government has identified during its review of the materials that it has seized from him. Accordingly, it is **ORDERED** that, no later than **2:00 p.m. ET on Wednesday, December 16, 2025**, Petitioner Richman shall file a brief response to the Government's [22] Emergency Motion that addresses these issues.

Fourth, and finally, the Government indicates in its [22] Emergency Motion that its ability to review "the substance of the information to be deposited" with a neutral custodian in the Eastern District of Virginia is impeded by the Court's [10] Order dated December 6, 2025, which temporarily limits the Governments' access to the relevant materials. Gov't's Mot., Dkt. No. 22, at 5 n.2. The Court previously offered the Government an opportunity to propose a procedure for accessing the relevant materials "for the limited purpose of responding to Petitioner Richman's claims in this case." Order, Dkt. No. 14, at 2. The Government did not avail itself of that opportunity, and it has not filed any subsequent request for leave to access the relevant materials. However, the Government may request leave to access these materials at any time, and the Court will resolve any such request as quickly as justice requires. *See* Order, Dkt. No. 10, at 2 (providing that the United States and its agents may access the relevant material only with "leave of this Court").

SO ORDERED.

Dated: December 16, 2025

COLLEEN KOLLAR-KOTELLY
United States District Judge

[1] In a footnote, the Government requests reconsideration of this Court's merits ruling that the Government's retention of the materials at issue violates Petitioner Richman's Fourth Amendment right against unreasonable seizures. *See* Gov't's Mot., Dkt. No. 22, at 7 n.5. However, the primary focus of the Government's [22] Emergency Motion is the proper scope of the remedy to be awarded. Accordingly, the Court focuses here on issues that are directly relevant to the issue of remedy.